

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502018CA013440XXXXMB

MANCIL'S TRACTOR SERVICE, INC.,

Plaintiff,

vs.

FEDERAL INSURANCE COMPANY,
LIBERTY MUTUAL INSURANCE COMPANY,
NATIONAL UNION FIRE INSURANCE CO. OF
PENNSYLVANIA, XL SPECIALTY INSURANCE
COMPANY, and ZURICH AMERICAN INSURANCE
COMPANY,

Defendants.

_____/

HUNT CONSTRUCTION GROUP, INC.,

Defendant in Intervention/Counterclaim Plaintiff,

vs.

MANCIL'S TRACTOR SERVICE, INC.,

Counterclaim Defendant.

_____/

HUNT CONSTRUCTION GROUP, INC,

Third-Party Plaintiff,

vs.

HW SPRING TRAINING COMPLEX, LLC,

Third-Party Defendant.

_____/

JOINT STATEMENT PER COMPLEX DESIGNATION ORDER

Plaintiff, Mancil's Tractor Service, Inc. ("MTS"), Defendants, Federal Insurance Company, Liberty Mutual Insurance Company, National Union Fire Insurance Co. Of Pennsylvania, XL Specialty Insurance Company, and Zurich American Insurance Company (hereafter "Hunt's Sureties"), Intervenor-Defendant/Third-Party Plaintiff, Hunt Construction Group, Inc. (hereafter, "Hunt"), and Third Party Defendant Hw Spring Training Complex, LLC ("HW"), through undersigned counsel and pursuant to ¶2.b., of an Order on Case Management Conference and Designating Case as Complex Action dated 7/31/19 ("Complex Order"), submit this Joint Statement¹:

1. Brief Factual Statement of the Action:

This action involves claims by, against, and/or between HW, Hunt, Hunt's Sureties, and MTS regarding the construction of a baseball training facility known as the Ballpark of the Palm Beaches (hereafter, the "Project"). HW, as Developer, entered into a contract (hereafter, the "Prime Contract") with Hunt, as Construction Manager, regarding the construction of the Project. In turn, Hunt entered into subcontracts regarding the construction of the Project, including a subcontract with MTS for over \$15 million for, among other things, all labor and services regarding sitework and excavation work at the Project (hereafter, "MTS's Subcontract"). Hunt and Hunt's Sureties issued a payment bond pursuant to Fla. Stat. § 255.05 (hereafter, "the Payment Bond") regarding work furnished by Hunt's subcontractors on the Project.

On October 23, 2018, MTS sued Hunt's Sureties for the alleged breach of the Payment Bond. MTS's claims are mainly for alleged extra work it claims it performed for the benefit of the Project with a value in excess of \$2.65M, described as its 'trash mining claim.' Hunt and Hunt's Sureties deny liability and, on July 10, 2019, Hunt filed an Amended Counterclaim against MTS alleging, among other things, that: (a) MTS's claim is overstated and is not for extra work; (b) relates to work that MTS would have been required to furnish for the \$15M already paid by Hunt under MTS's Subcontract; (c) MTS was, in fact, overpaid by more than \$590,000; and (d) that MTS' claim is barred by the terms of MTS's Subcontract and the Payment Bond (including a provision indicating that Hunt cannot be liable to MTS for extra work unless HW is liable to Hunt for that work). Hunt and Hunt's Sureties also allege that MTS breached the Subcontract because of, among other issues, delays caused by MTS. Hunt and Hunt's Sureties allege MTS is liable for

¹ On May 28, 2019, Hunt filed a pending Motion to Transfer Case to Division AO seeking to transfer this case to Division AO where "companion cases" to this case are pending. That motion is scheduled to be heard on September 25, 2019. To the extent that motion is granted and this case transferred, and the companion cases are ultimately consolidated, any pre-trial deadlines in this matter will likely have to be revised.

delays and delay-related damages asserted by HW against Hunt.

On May 5, 2019, Hunt filed a Third-Party Complaint against HW alleging that HW breached the Prime Contract for multiple reasons, including: (a) HW's failure to pay millions of dollars owed to Hunt under the Prime Contract; (b) failure to approve change orders and extend contract time; (c) improper assertion of liquidated damages and other damages/offsets; and (d) other issues. Hunt's Third Party Complaint also seeks indemnity for MTS's claim. On August 2, 2019, HW filed an Amended Counterclaim against Hunt alleging that Hunt breached the Prime Contract by, among other things: (a) delaying the Project; (b) furnishing defective and incomplete work; (c) failing to ensure that multiple subcontractors performed work in accordance with the Prime Contract; and (d) failing to manage the Project.

Hunt has not yet responded to HW's Amended Counterclaim. Hunt intends to seek indemnity from MTS and other subcontractors regarding the claims raised in HW's Amended Counterclaim.

2. Theories of Damages By Parties Seeking Affirmative Relief:

MTS seeks damages under the payment bond for ~\$2.65M plus attorneys' fees, costs, and interest.

Hunt seeks damages of in excess of \$590,000 from MTS for breach of the MTS Subcontract, plus interest, fees, and costs. Hunt also seeks indemnification from MTS for the claims raised by HW against Hunt. Hunt also seeks millions of dollars from HW for breach of the Prime Contract and Hunt seeks indemnification from HW regarding MTS's claims, plus interest, fees and costs. Hunt also intends on bringing claims for breach of contract against the subcontractors that may be responsible for the claims raised in HW's Amended Counterclaim.

HW seeks millions of dollars from Hunt for breach of the Prime Contract, including but not limited to liquidated damage available under the Prime Contract, credits due for items included in the GMP but not provided, costs to remedy defective work, and costs to complete work not yet finished.

3. Likelihood of Settlement:

The Parties have held several in person meetings for settlement purposes, but have reached impasse. The Parties agree to continue to explore the possibility of settlement and to mediate the case jointly.

4. Likelihood of Appearance of Additional Parties:

MTS is not contemplating bringing any additional defendants into the lawsuit. Hunt anticipates joining four additional subcontractors as parties that may be liable for claims raised in HW's August 2, 2019 Amended Counterclaim. HW does not anticipate joining additional parties.

5. Proposed Time Limits to:

A. Joining Parties and Amend Pleadings:

MTS proposes that all parties be joined by September 1, 2019. Hunt and HW propose that all parties be joined by September 30, 2019. The Parties propose the pleadings be amended by no later than November 30, 2019. However, those deadlines would have to be extended if significant time transpires in relation to hearings on any Motion(s) to Dismiss.

B. To File and Hear Motions:

The Parties have agreed that all dispositive pretrial motions and memorandum of law shall be filed and served sixty (60) days prior to the Final Pre-Trial conference.

C. To Identify Any Nonparties to Whom Parties Will Seek to Allocate Fault:

The Parties propose that all nonparties against whom the parties will seek to allocate fault in this case be identified in each party's respective affirmative defenses—due in accordance with the Florida Rules of Civil Procedure and identified prior to the close of discovery.

D. To Disclose Expert Witnesses:

The Parties have not been able to agree to deadlines².

MTS proposes the following deadlines:

October 31, 2019	Mancil's Expert Disclosure Deadline
November 28, 2019	Hunt's Trial Expert Disclosure Deadline
December 31, 2019	HW's Trial Expert Disclosure Deadline
December 31, 2019	Additional Third Parties Expert Disclosures
January 16, 2020	Rebuttal Expert Disclosures

Hunt and Hunt's Sureties propose the following deadlines:

March 30, 2020	HW's Expert Disclosure Deadline
April 30, 2020	Hunt's and Hunt's Sureties Trial Expert Disclosure Deadline
May 31, 2020	Mancil's Trial Expert Disclosure Deadline
May 31, 2020	Additional Third Parties Expert Disclosures
June 15, 2020	Rebuttal Expert Disclosures
HW proposes the following deadlines:	
March 30,	Mancil's Expert Disclosure Deadline

² See footnote 1. The outcome of Hunt's pending Motion to Transfer Case to Division AO Motion affects the deadlines and scope of this litigation.

2020	
April 30, 2020	Hunt's Trial Expert Disclosure Deadline
May 31, 2020	HW's Trial Expert Disclosure Deadline
May 31, 2020	Additional Third Parties Expert Disclosures
June 15, 2020	Rebuttal Expert Disclosures

E. To Complete Discovery:

The Parties have not been able to agree to deadlines to complete discovery. MTS proposes that all fact witness discovery shall be completed on or before October 31, 2019 and all expert discovery completed on or before December 17, 2019. Hunt, Hunt's Sureties, and HW propose that all fact witness discovery shall be completed on or before June 30, 2020 and all expert discovery completed on or before August 15, 2020. The Parties have further agreed that in order to comply with the discovery cut-off, written discovery must be served on or before 60 days before the applicable discovery cut-off. All experts and expert reports shall be disclosed in accordance with the deadlines set forth in ¶5.D above.

6. "Lead Trial Counsel":

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7. Necessity for Protective Order(s):

The Parties do not anticipate requiring protective orders to conduct discovery at

this time.

8. Proposal for the Formulation and Simplification of the Issues:

None at this time. However, the Parties agree to endeavor to simplify the issues. MTS does not anticipate filing a motion for summary judgment. Hunt anticipates filing motion(s) for summary judgment. HW anticipates filing motion(s) for summary judgment. Such motions will be heard by the deadline set forth in ¶5.B above.

9. Possibility of Obtaining Admissions of Facts and Exchange of Documents:

Counsel will confer telephonically shortly before the applicable discovery cut-off date to discuss stipulations regarding the authenticity of documents and the need for advance rulings from the Court on the admissibility of evidence.

10. Electronically Stored Information:

The Parties agree to preserve ESI. MTS has already produced non-privileged ESI related to the project to Hunt. The Parties will collaborate further to address phased and cost-effective production of ESI, but anticipates pretrial rulings on the costs and extent to be required from this Court.

11. Referring Matters to a Magistrate Judge or Master:

The Parties have no objection to referring only discovery motions to the magistrate.

12. Preliminary Estimates of Time for Trial:

MTS estimates a six day, Hunt and Hunt's Sureties estimates a three week, and HW estimates a five week **non-jury** trial.

13. Requested Date(s) for Conference Before Trial, a Final Pretrial Conference and Trial:

MTS requests a Final Pretrial Conference on or no earlier than January 20, 2020 and Trial date starting on or no earlier than February 24, 2020. Hunt and HW request a Final Pretrial Conference on or no earlier than September 15, 2020 and Trial date starting on or no earlier than October 12, 2020.

14. Description of Pertinent Documents and List of Fact Witnesses:

MTS's Position: MTS believes that (1) the Prime Contract with exhibits and referenced enclosures; (2) the MTS Subcontract with exhibits; and (3) Hunt's Sureties' Payment Bond are pertinent documents. The Parties will work to identify other pertinent documents. The Parties agree that (1) MTS's 1.310(b)(6) corporate designee; (2) MTS's project manager; (3) MTS's testifying expert(s); (4) Hunt's 1.310(b)(6) corporate designee; (5) Hunt's project manager; (6) Hunt's testifying expert(s); (7) HW's 1.310(b)(6) corporate designee; (8) HW's project manager; (9) HW's testifying expert; and (10) Caufield & Wheeler's 1.310(b)(6) corporate designee for the project will be required depositions as they are essential witnesses.

Hunt's and Hunt's Sureties Position: A list of potential pertinent documents and fact witnesses is attached as Exhibit A.

HW's Position: With respect to documents, HW believes that the contracts between the Parties, the Parties' non-privileged project files, and related ESI are relevant. Given the infancy of the claims, HW reserves the right to identify additional fact witnesses, but agrees with MTS that each Party's corporate representative, project manager and testifying experts should be deposed. Additional party witnesses may also be necessary as well as there were other subcontractors and consultants involved in the project. Further, HW objects to Hunt's attached Exhibit A as overly-broad, unduly burdensome, and an improper attempt at obtaining discovery protected by the attorney/client and work product privileges. HW does not agree that each fact witness listed on Exhibit A is pertinent, nor does HW agree that Hunt is entitled to depose each individual listed on Exhibit A. Second, HW does not agree that each category of documents listed on Hunt's Exhibit A is discoverable, nor relevant. HW does not waive its discovery objections by virtue of this joint report, and specifically reserves its rights to address these issues as they arise in due course.

15. Number of Experts/Fields:

MTS, Hunt, and Hunt's Sureties propose that each party is limited to one expert witness per area of specialty. It is HW's position that the parties are entitled to engage and have testify the expert witnesses necessary to present their case and defenses, in accordance with Florida law. HW does not agree that each party should be limited to one expert witness per area of specialty if multiple experts are necessary to opine on a "specialty", but HW does agree that expert witness testimony should not be duplicative or cumulative. The Parties anticipate experts will opine generally on: (a) construction/design issues relating to particular Project systems; (b) damages; (c) the Project schedule and related delay claims, and (d) other potential experts.

16. Any Other Information Helpful to the Court:

The following Motions are pending: (a) Hunt's Motion to Transfer Case to Division AO (set for hearing 9/25/19 @9:30 a.m) filed on May 28, 2019.

Dated: August 26, 2019

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Union Fire Insurance Company of Pittsburgh, PA,
Zurich American Insurance Company, Federal
Insurance Company, Liberty Mutual Insurance
Company and XL Specialty Insurance Company*

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NOT A CERTIFIED COPY

Exhibit A to Case Management Report

Preliminary List Of Persons Who May Have Knowledge And Possible Pertinent Documents¹

I. Persons Who May Have Relevant Knowledge

Organization	Name	
	First	Last
Hunt Construction Group, Inc.	Bill	Wolfe
	Bob	Cooper
	Carrie	Pereira
	Charles	Fisher
	Chris	Brown
	Chris	Bauer
	Clint	Binkley
	Dave	Anderson
	Dave	Alexander
	David	Schutle
	Doug	Utt
		Fernandez
	Eva	Cendan
	Jack	McGowan
	James	Hinda
	Joe	Stimmel
	John	Reich
	John	Schill
	John	Johnson
	Joseph	Kralis
	Ken	Johnson
	Mark	McCaskey
	Michael	Grueter
	Mike	Hale

¹ To date, no depositions and only very limited document discovery have taken place and the facts supporting the claims raised in this case are still being investigated. Additionally, the case is not yet at issue and the parties' claims and defenses are still developing. As a result, this list is preliminary and is subject to change as the case develops. Hunt reserves the right to revise the information in this list as necessary.

	Randall	Galvin
	Raul	Dominguez
	Rick	Petty
	Ricky	Shockley
	Steve	Laurila
	Terry	Tinant
<u>Straticon Construction Services, Inc.</u>		
	Brian	Perrault
	Brian	Perrault
	Chris	Wincek
	Chris	Wincek
	Enrique	Coppin
	Jason	Rauschenberger
	Jeff	Hardin
	Jeff	Davis
<u>Messam Construction</u>		
	Angela	Messam
	Limreal	Blanc
	Steve	Messam
	Wayne	Messam
<u>Cooper Construction Management</u>		
	Jackie	Cooper
	Jonuntae	Underwood
	Veronica	Cooper
<u>"2" SBW & Associates, Inc.</u>		
	Javin	Walker
	Kenny	Throop
	Kevin	Throop
<u>A Christian Glass & Mirror Company</u>		
	Jeff	Cicciarelli
	Mark	Brintnall
	Ron	Dable
	Ross	Schmidt
<u>Acousti Engineering</u>		
	Mike	Haines
<u>Advanced Woodworking Industries</u>		
	Ken	Beane
<u>Allied Steel Buildings, Inc.</u>		
	Brandon	[1]
	Eric	Stephan
	Victor	Simmons

Am Finn Sauna & Steam

Dustin	Eagans
Parris	[1]

American Overhead Door Co, Inc.

Jim	Young
Rosa	Falcon
Steve	Partin

American Seating Company

Nelson	Wilfore
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Applegate Interiors, Inc.

Bill	Applegate
Jim	Miller

B&B Interior Systems, Inc.

Jeff	Burley
Larry	Howard
Robert	Helm
Robert	Hela
Taylor	Burley

Brightview Landscape (formerly Valley Crest)

Andy	Johnson
Ariel	Caballero
Jorge	Martinez

Carfaro

Joseph	Carfaro
Patty	Fye

CCK Construction Services

Anthony	Colasanti
Brian	O'Leary
Ever	Osorto
George	Fillar
Michael	Miller
Miguel	Polania
Robert	Grebic

Customer Driven Staffing

Jason	Shepard
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DAVCO Electrical Contractors Corp.

B. David	Collins Jr.
Chris	Racin
Mark	Komar
Rick	Hannan
Russell	White

	Vaughn	Collins
	Victor	Smith
	White	Smith
<u>Environmental Painting Alternatives, Inc.</u>		
	Jose	Maldonado
	Marvin	Couch
	Nancy	Couch
<u>Everglades Trading & Office Supply, LLC.</u>		
	Kathy	Cross
<u>Florida Exotic A Landscaping Company, Inc.</u>		
	Brian	Congdon
	Laura	Holt
	Lehr	Felipe
	Reubin	Turner
<u>General Caulking & Coatings Co, Inc.</u>		
	Mike	Hazelwood
	Terry	Wagner
<u>Hollman, Inc.</u>		
	Bobby	Hughley
	Dan	[1]
	Greg	Wilson
	Mike	[1]
	Sandra	Mallette
<u>HydroWorx International, Inc.</u>		
	Jeff	Luther
<u>Jack Walsh Carpets and Rugs, Inc.</u>		
	Bruce	Bradbury
	Justin	Walsh
	Sam	Beck
	Tracey	Baessell
<u>Jade Communications</u>		
	Kelvin	[1]
	Larry	Mace
	Serge	Leblanc
<u>Kirlin Florida, LLC.</u>		
	Anthony	Fritz
	Chip	Mitchell, Esquire
	Christopher	Corona
	Eric	Webster
	George	Case
	Greg	Gillam

	Jim	Calvert
	Josh	Wilson
	Steve	Forsyth
<u>Long Fence Company</u>		
	Larry	Friedman
	Nick	Polizzi
<u>Lotspeich Co. of Florida, Inc.</u>		
	Denis	Brodeur
	Jeff	Fee
	Jim	Yerrick
	Joe	Vernaglia
	Jose	Gonzalez
	Justin	Vernaglia
	Sherry	Riggott
<u>Mancil's Tractor Service, Inc.</u>		
	David	Crowell
	Dixie Lee	Owens
	Eric	Willenberg
	Matthew	Kasperek
	Rick	Mancil
	Tim	Reynolds
<u>Metro Fire Sprinkler Services, Inc.</u>		
	Ron C.	Lee
	Ryan	Lee
	Shelly	Schuyler
<u>McCormick Fabrication Company, Inc.</u>		
<u>MIK, LLC.</u>		
	Aasha	Anderson
	Carlos	Marulanda
	Craig	Halick
	Dennis	Neff
	Michael	Dagen
	Tim	Hackett
<u>Net Connection, LLC.</u>		
	Andy	Turner
	Ken	Burnham
	Shane	Willoughby
<u>Peerson Audio, Inc.</u>		
	Kevin	Varnadore
<u>Sammet Pools, Inc.</u>		
	John	Sammet

Sports Contracting Group, LLC.

Chris	Franks
Chris	McGill
Kirk	Welsh
Lauren	Markus
Luis	Guadarrama

SWF Industrial, Inc.

Mike	Smith
------	-------

Thermaseal Roof Systems, LLC.

Charlie	Sapienza
David	Wikel
John	McGuinness
Mike	Fuggetta
Toni	Sapienza

Therma Seal Insulation Systems, Inc.

Brian	Sharp
-------	-------

TWS Fabricators, Inc.

Bill	Gelthaus
Chris	Eberle
John	Hellrung
Ronnie	[1]
William	Gelthaus

Xpert Elevator

Angie	DiFranco
Dave	Rice
Dean	Beckemeyer
Erica	[1]
Johnny	Pellagrino
Kathy	[1]

Houston Astros, LLC.

Giles	Kibbe
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Washington Nationals Baseball Clubs, LLC.

Arthur	Fuccillo
Matt	Blush

HW Spring Training Complex, LLC.

Brady	Ballard
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Mark Taylor, Inc.

Bob	Hawthorne
George	Weland
Marc	Taylor

Hoar Program Management

	Beverly	Hipsh
	Larry	Hipsh
<u>HKS Architect, Inc.</u>		
	Brent	Sikora
	Fred	Ortiz
	Jason	Huber
	Julie	Crowe
	Kathy	Starr
	Mike	Drye
	Morris	Stein
	Tim	Cotter
	Tyler	Ashworth
<u>Glidden Spina Interiors</u>		
	Eileen	Trimble
	Keith	Spina
	Tammy	O'Rourke
<u>Bliss & Nyitray, Inc.</u>		
	Alfonso	Lazaro
<u>Kimley-Horn and Associates, Inc.</u>		
	Ed	Grady
	Jason	Webber
	Michael	Schwartz
<u>WSP Global, Inc.</u>		
	Jay R	Wratten
	John	Guerrero
	Jonathan	Gilliespie
	Richard	Calame Jr.
<u>Johnson, Levinson, Raga, Davila, Inc.</u>		
	Chuck	Gableman
<u>Lloyd Consulting Group, LLC.</u>		
	Anthony	Stevenson
<u>URS</u>		
	Bob	Cooper
	Ed	Leding
<u>Ardaman</u>		
	Robert	Balbis
<u>Others</u>		
	Albert	Sanchez
	Alejandro	Ochoa
	Alex	Mills
	Allen	Gray

Bill	McBride
Cathy	Middleton
Chuck	Hoogenboom
DeAndre	Smith
Evelyn	Looney
Gary	Pearson
James	Wyatt
Jay	Merriman
Jose	Cedeno
Kyle	Goebel
Marcel	Braitwaire
Matt	Eggerman
Michael	Quitero
Nicole	Milano
Pat	Delano
Ron	Cline
Steve	Hickey
Tom	Mc Nicholas
Tonya	
Davis	Johnson
Wayne	Glover
William	Ferluga
Representatives from Caufield & Wheeler	
County Representatives	
Corporate Representatives for the parties and identified non-parties	

[1] Last name unknown.

II. Pertinent Documents

The pertinent documents include various records, including project records, of the parties and multiple non-parties, including but not limited to: estimates, proposals, and take-offs; bidding documents; contracts and contract documents; draft agreements; bonds; purchase orders; construction change directives; architectural site instructions; bulletins; project manuals; job cost reports; project schedules; time impact analysis; completion certificates; correspondence; submittal logs; meeting minutes; requests for information; record logs; drawings; plans; specifications; reports; schematics; building records; invoices; work tickets; payment applications and requests; payment and disbursement records; requests for equitable adjustment; change orders and change order requests; work notices; punch lists; activity completion lists; Ballpark activity records; delay and impact notifications; inspection reports; photos and videos; county records; damages documents; and other documents.